

**POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON**

ANDY DEL NAGRO,	)	
	)	PCHB NO. 93-126
Appellant,	)	
	)	
v.	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
NORTHWEST AIR POLLUTION	)	AND ORDER
CONTROL AUTHORITY,	)	
	)	
Respondent.	)	

This matter came on for hearing before the Pollution Control Hearings Board on November 5, 1993, at the Board's office in Lacey, Washington. Board Member Richard C. Kelley presided, and Chairman Robert V. Jensen was also present. Proceedings were recorded by Betty Koharski of Gene Barker and Associates, Olympia.

The issue appealed was a civil penalty of \$1,500 issued to Andy Del Nagro ("Del Nagro") by Northwest Air Pollution Authority ("NWAPA") on May 17, 1993.

Del Nagro represented himself. NWAPA was represented by Inspector Julie Elsbree.

Witnesses were sworn and testified, exhibits were examined and admitted, and closing arguments were heard. From these, the Board makes these

**FINDINGS OF FACT**

**I**

Inspector Elsbree visited the site, 1318 Beaver Lake Road near Clear Lake, at noon on April 18, 1993, in response to a citizen's complaint.

**II**

At the site, Elsbree found a pile of construction debris, approximately 25'x25'x4', burning. A resident of the property, Gary Weatherby, informed Elsbree that he was tending the fire for Del Nagro, who owned the property. Del Nagro arrived several minutes later and

FINAL FINDINGS OF FACT,  
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1 confirmed that the debris was his, from his residence at 1297 S. Front Street in Clear Lake,  
2 which he was demolishing.  
3

### 4 III

5 The fire was found by Elsbree to contain the following materials: tarpaper, wallpaper,  
6 insulation, rubber tubing, wiring, sheet rock, composition roofing, linoleum, and a fireplace  
7 insert.

### 8 IV

9 Del Nagro showed Elsbree a demolition permit and claimed to have a burning permit.

### 10 V

11 Upon further investigation, Del Nagro was found to not have a burning permit.

### 12 VI

13 Landfill disposal fees for proper disposal of the debris from a house of this size,  
14 approximately 1,911 square feet, would total approximately \$1,000 to \$1,200.

### 15 VII

16 Del Nagro admits the burning of the prohibited materials. He testified that his  
17 intention had been to keep the prohibited materials separate, but "the fire got away from us",  
18 and he instructed his employees to bulldoze all the materials together into the one fire pile.

### 19 VIII

20 Del Nagro testified that his wife had purchased the demolition permit and he had  
21 assumed it included a permit for burning, but had not looked at it.

### 22 IX

23 Elsbree issued Notice of Violation #2236 to Del Nagro on April 19, 1993.  
24  
25  
26

1  
2 X

3 NWAPA Air Pollution Control Officer Terryl L. Nyman issued Del Nagro a Notice of  
4 Imposition of Penalty on May 17, 1993, in the amount of \$1,500.

5 XI

6 Del Nagro filed a Notice of Appeal with the Board on June 18, 1993.

7 XII

8 Any conclusion of law deemed a finding of fact is hereby adopted as such. From these  
9 findings of fact the Board makes the following

10 CONCLUSIONS OF LAW

11 I

12 The Board has jurisdiction over this appeal under RCW 70.94.431, RCW 43.21B 110,  
13 and RCW 43.21B 310. The Respondent NWAPA bears the burden of proof. WAC 371-08-  
14 183. The Board takes judicial notice of the NWAPA Regulation

15 II

16 NWAPA Regulation 501.22 prohibits burning various materials, including composition  
17 roofing, tarpaper, sheet rock, linoleum and insulation. Section 501.3 prohibits any burning  
18 without a valid permit.

19 III

20 In determining the amount of the penalty, NWAPA considered the fact that it was Del  
21 Nagro's first offense, the size and nature of the fire, the lack of visible effort to separate out  
22 prohibited materials, and the landfill fees avoided by Del Nagro by burning the materials. All  
23 are appropriate considerations.

24 IV

25 Del Nagro's appeal to the Board was timely filed.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER  
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V

We conclude that NWAPA has met its burden of proof, and the civil penalty issued to Del Nagro was justified and reasonable.

VI

Any finding of fact deemed to be a conclusion of law is hereby adopted as such. From these conclusions of law, the Board enters the following


ORDER

THAT the \$1,500 civil penalty issued to Andy Del Nagro by NWAPA is AFFIRMED.

DONE this 10th day of November, 1993.

POLLUTION CONTROL HEARINGS BOARD

  
RICHARD C. KELLEY, Presiding

  
ROBERT V. JENSEN, Chairman

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